



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.washoecounty.us

CM/ACM JS
Finance LC
DA DR
Risk Mgt. N/A
HR N/A
Grant Mgt. N/A

STAFF REPORT

BOARD MEETING DATE: December 13, 2016

DATE: October 31, 2016
TO: Board of County Commissioners
FROM: Andrea Tavener, Library Development Officer
327-8360 – atavener@washoecounty.us

THROUGH: Jeff Scott, Library Director

SUBJECT: Recommendation to approve sales agreement between Bibliotheca, LLC and the Washoe County Library System in the approximate amount of [\$222,393-\$0 County General Funds], to implement Radio Frequency Identification (RFID) systems at the branches; and if approved, authorize the Library Director to sign the agreement. (All Commission Districts.)

SUMMARY

Washoe County Library System (WCLS) and Bibliotheca, LLC a corporation in the State of Delaware, USA have jointly developed the attached Radio Frequency Identification (RFID) Sales Agreement identifying the terms and conditions to implement Radio Frequency Identification (RFID) systems at all library locations. No contract can be assigned without the consent of the governing body or its authorized representative (NRS 332.095). Bibliotheca is willing to provide such products and services and is willing to provide such products and services pursuant to all the terms and conditions in the Sales Agreement (Agreement).

This agreement specifically identifies the Agreement effective date and termination, scope of service, and duties of Bibliotheca, including warranty information.

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

1. Any properly executed amendment or change order to this contract (most recent with first priority), and
2. This contract, and
3. Any attachments included with this contract.

County Priority/Goal supported by this item: Valued, Engaged Employee Workforce – Simplify Workflows to Improve Service Delivery and Customer Outcomes; and Proactive Economic Development and Diversification – Be responsive and proactive to pending economic impacts.

PREVIOUS ACTION

There has been no previous action regarding the Radio Frequency Identification (RFID) Sales Agreement.

BACKGROUND

On July 18, 2016, the Washoe County Purchasing Department, solicited Request for Proposals (RFP) No. 2985-16 for the Library System RFID Conversion that include pricing on hardware, software, training and support services necessary to install, manage and maintain Radio Frequency Identification (RFID) enabled self-checkouts, collection management, and security systems at its 12 branches. Sealed proposals were accepted until the close of business on Wednesday, August 24, 2016. Purchasing received 5 total proposals. Each proposal was then evaluated and the top finalists were invited to the County to take part in an interview to present their proposal and answer questions from the evaluation committee. It was recommended that Bibliotheca be selected based on the scoring and rating criteria. The RFID software and hardware must be compatible with the Library's Koha Integrated Library System (ILS), and be expandable as future needs arise.

Among other benefits, the proposed RFID system should provide:

- Significant productivity gains through reduction in key labor-intensive workflow processes;
- Enhanced customer service;
- Reduced material losses;
- Detailed reports and configuration tools;
- Streamlined patron self-checkout; multiple item check-out
- Streamlined staff check-in; multiple item check-in
- Reduced incidents of staff repetitive motion injuries; and
- Improved inventory and shelf-reading accuracy.

Washoe County Library System serves a population of approximately 433,000. This number is expected to grow with the introduction of new businesses and manufacturing. The Library sees the need to provide more public hours at its branches, but does not expect to receive a great deal more funding for staff. The Library's "Facility Master Plan", created in 2015 by Collaborative Design, recommended employing RFID to improve patron self-checkout and to automate returned materials handling (AMH), to free up library staff time to provide better service. AMH will be addressed in a future project.

The Library's 12 branches circulate approximately 2 million items annually. The Library has 28 self-produced self-check work stations, which it plans to use for the RFID project. The Library has 50 Circulation Computers, 5 double security gates, and 4 single security gates. Approximately 50% of the circulation currently being done by patrons on self-checks, with this number expected to increase. This is the initial phase of the project.

FISCAL IMPACT

The total project is estimated to cost \$222,393. This is the initial phase of the RFID project for set up of RFID tags, WCLS staff workstations, and security gates. The Washoe County Library System will be using gift fund donations. The WCLS has applied for a RFID grant to implement the second phase Automated Materials Handling (AMH) through LSTA funds.

RECOMMENDATION

Recommendation to approve sales agreement between Bibliotheca, LLC and the Washoe County Library System in the approximate amount of [\$222,393-\$0 County General Funds], to implement Radio Frequency Identification (RFID) systems at the branches; and if approved, authorize the Library Director to sign the agreement.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Recommendation to approve sales agreement between Bibliotheca, LLC and the Washoe County Library System in the approximate amount of [\$222,393-\$0 County General Funds], to implement Radio Frequency Identification (RFID) systems at the branches; and if approved, authorize the Library Director to sign the agreement."

Bibliotheca & Washoe County
Library System Sales Agreement
Effective: December _____, 2016

CONFIDENTIAL, Washoe County Library System and Bibliotheca use

Sales Agreement

THIS AGREEMENT is made and entered into this _____ day of December, 2016, by **Bibliotheca, LLC**, a corporation in the State of Delaware, USA, with offices at 3169 Holcomb Bridge Rd., Ste. 200, Norcross, Georgia 30071 and 403 Hayward Ave. North, Oakdale, Minnesota 55128 (hereinafter referred to as "Bibliotheca") and **Washoe County Library System**, located at 301 S Center St., Reno, Nevada 89501 (hereinafter referred to as "Customer").

RECITALS

WHEREAS, Customer desires to implement Radio Frequency Identification (RFID) systems on its premises, and;

WHEREAS, Bibliotheca is willing to provide such products and services that together comprise the system(s) listed above and is willing to provide such products and services pursuant to all the terms and conditions in the Agreement;

NOW THEREFORE, in consideration of the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bibliotheca and Customer have agreed and do hereby enter into this Agreement according to the provisions set forth herein:

WITNESSETH: In the event of conflicting provisions, all documents shall be construed according to the following priorities:

1. Any properly executed amendment or change order to this contract (most recent with first priority), and
2. This contract, and
3. Any attachments included with this contract.

TERM AND TERMINATION

Term

The Effective Date of commencement of this Agreement shall be the date indicated above. The Term of this Agreement shall begin on the Effective Date and shall extend for the length of the term outlined below, unless terminated earlier under one of the termination provisions contained in this Agreement.

The initial term of this agreement shall be not less than five (5) years commencing on the Effective Date, with the first year warranty commencing on the Go Live date. Go Live Date means, with respect to Bibliotheca software license orders, the date on which the software is available for operational use for normal daily business, including performing core functions for which it was intended.

Support and maintenance shall be paid in 12-month installments in advance and shall auto-renew on an annual basis of the Go Live date. Subsequent years of support and maintenance and subscriptions fees are to be paid annually in advance on the anniversary of the Go Live date.

FUNDING OUT CLAUSE - In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal year for payments due under this Purchase Order, Buyer will notify Seller or its assignees of such occurrence and this Purchase Order shall terminate on the last day of the fiscal year for which appropriations were received, without penalty or expense to Washoe County of any kind whatsoever, except the

portions of payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available.

Termination

- a. This Agreement may be terminated by Customer upon ninety (90) days written notice to Bibliotheca should Bibliotheca fail to perform in accordance with all the terms of this Agreement.
- b. Notwithstanding Clause A., Bibliotheca shall have right to redress, with thirty (30) days to remedy the issue(s) from the date of notification from the Customer.
- c. Regardless of reason for termination, Customer is responsible for payment for all products and services delivered according to the terms and conditions of this Agreement up until the date of termination of this Agreement.

DUTIES OF BIBLIOTHECA

1. Bibliotheca shall enforce good order and discipline among its employees and subcontractors, if any, and shall keep work areas reasonably free from waste materials and rubbish resulting from its operations. Furthermore, Bibliotheca shall deliver products and perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Bibliotheca will comply with all local laws, ordinances, and regulations bearing on the performance of the Work.
2. Bibliotheca represents that in the performance of the work, duties, and obligations assumed by it under this Agreement that it is acting and performing as an independent contractor and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the Customer. Bibliotheca will have the authority to act on behalf of the Customer only to the extent provided in this Agreement unless otherwise modified by written instrument.
3. Bibliotheca will supply Customer with written invoices according to the payment schedule specified in the Agreement or, if not specified, following shipment of products to the Customer. Unless otherwise stated and agreed to in writing, Bibliotheca is not responsible for the collection or payment of any duties, excise, sales, use property, retailers, occupation, business, or similar tax. The amount of any such taxes which are payable in accordance with the provisions of any statute or rules, regulations or decision of any taxing authority, will be paid by the Customer.
4. Bibliotheca agrees that title to all Work covered by an invoice for payment will pass to the Customer upon receipt of such payment.
5. Bibliotheca warrants products in accordance with the warranty attached to this Agreement (Exhibit 2).
6. Bibliotheca agrees to support and maintain products during the first year of operation in accordance with document entitled Annual Maintenance and Support for Bibliotheca Products (Exhibit 3). Following the first year, Bibliotheca agrees to continue to support and maintain products supplied under this Agreement for the period(s) specified in the Product Maintenance and Lifespan Policy (Exhibit 4), on a year by year basis, contingent upon the Customer's payment in advance for such support and maintenance.

7. Bibliotheca agrees to indemnify and hold harmless Customer from all claims and suits for loss of or damage to property, including loss of the use thereof, or injuries including death to persons, and from all judgments recovered therefore, and from all expense in defending said claims or suits, including court costs, attorney fees and other expenses, caused by an act or omission of Bibliotheca and/or its subcontractors, their respective agents, servants and employees working on the project and not caused by the fault or negligence of the Customer.
8. Without limiting its liability under this Agreement, Bibliotheca will maintain at its expense during the life of this Agreement Workman's Compensation insurance as mandated by law and comprehensive General Liability insurance in amounts no less than:

Bodily Injury Each Person - \$1,000,000
Bodily Injury Each Occurrence - \$2,000,000
Property Damage Each Occurrence - \$1,000,000

Customer will be named as an additional insured and noted as such on each policy.

DUTIES OF CUSTOMER

1. Customer will inspect all products immediately upon delivery, noting damage to external packaging and/or contents on the delivery receipt or bill of lading. Customer will immediately notify Bibliotheca of such damage. Customer understands that failure to immediately report damage may result in the inability to file claims with the shipper or insurance companies. Damages not covered as a result of the Customer's failure to examine or report are the full responsibility of the Customer.
2. Customer will issue purchase orders to Bibliotheca in writing for the products and services listed in Exhibit 1, noting desired delivery dates that will not be earlier than sixty days following receipt of the purchase order by Bibliotheca. Unless noted otherwise on the purchase order, Customer will be prepared to receive products from the date of its purchase order. The specific date for delivery and commencement of installation shall be agreed upon in consultation between the Customer and Bibliotheca.

Should Customer, due to delays in construction or for any other reason, not be prepared to accept delivery on or before the stated desired delivery date on the purchase order, Bibliotheca will delay without penalty the shipment of product for up to two weeks following that date as long as no cost-incurring changes are required in the Bibliotheca technician's installation schedule.

If, after two weeks following the stated desired delivery date, Customer is still not ready to accept delivery, Bibliotheca will invoice Customer according to the percentages below and delay shipment of the products on condition that the Customer remit payments as if shipment and installation had taken place at the latest possible dates that fall within this two week period: 35% of the total contract seven days following the date of the delivery specified on the purchase order and 15% fourteen days following the date of delivery specified on the purchase order.

In all cases, Customer will be fully responsible for all costs incurred by Bibliotheca as a result of a change in the Bibliotheca technician's installation schedule. Furthermore, as Bibliotheca will be required to store the equipment until Customer accepts delivery,

Customer will be charged 0.5% of the purchase price of the system and/or products each month until system and/or products are shipped and accepted by Customer.

3. Customer will accept delivery of products delivered to its truck high dock during normal business hours. If Customer does not have a truck high dock or can accept deliveries only during specified hours, it must note these and any other special delivery requirements on its purchase order. The absence of a truck high dock and the presence of special delivery requirements may result in increased delivery costs, for which the Customer will be fully responsible.
4. The total payable under this Agreement is \$222,353.00, unless otherwise modified by an Amendment (reference Exhibit 1). Customer will remit payment in US Dollars to Bibliotheca no more than 30 days following the date of invoice. Payments for products/services are due within thirty days of invoice receipt. Support and maintenance is invoiced prior to the start of the contract period and is due within thirty days of invoice.

Interest will accrue on the amount due at the rate of two percent (2%) per month for each full calendar month or part thereof during which such amount shall be outstanding, such interest to commence to accrue on the fifteenth (15th) day after such amount is due and payable. If this interest rate exceeds the maximum interest rate permitted by law, then the interest payable shall be at such maximum permissible rate.

5. If Customer claims exemption from any taxes imposed by any taxing authority, Customer will save Bibliotheca harmless from any such tax, together with any interest, fines, or penalties thereon, which may at any time be assessed against it by reason of the fact that such Work or portion thereof is held to be taxable by the taxing authority. In the event that the Customer is exempt from such taxes or should Customer elect to pay such taxes directly to the taxing authority, then Customer shall provide Bibliotheca with a valid tax exemption certificate or similar document in form satisfactory to Bibliotheca.
6. Customer is responsible for supplying materials, equipment, and services as described in Exhibit 1 and other documents that have been provided to the Customer relating to the work proposed. In addition, Customer is responsible for security and paying for all licenses and permits required for the execution of the work, including SIP2 licenses.
7. Customer will designate a primary and secondary contact person for the purpose of coordinating with Bibliotheca representatives all technical aspects and implementation of the system(s). These designated individuals will promptly provide to Bibliotheca all information needed by Bibliotheca for implementation of the system.
8. Customer warrants that the project is located on real property owned by the Customer or in its leased facilities and that access to such real property will be furnished to Bibliotheca at such times and on such dates as Bibliotheca may reasonably require in connection with the execution and completion of the Work.

Customers will provide a clear path for access to and from the installation site for personnel and equipment. Customer will ensure that not later than the scheduled start of installation date, the installation site is free and clear, that all civil work and necessary removal or modifications of existing equipment or buildings is concluded, and that all necessary Customer provided infrastructure, including but not limited to electrical and network connections, is in place according to Bibliotheca specifications.

Customer will be fully responsible for all costs associated with the failure of the Customer to meet these requirements. These costs include, but are not limited to, additional work performed by Bibliotheca to prepare the site, additional time required for installation and training, and the additional costs associated with required travel.

9. Customer understands that the proper performance of the system depends upon a thorough understanding and implementation of the installation and operating instructions provided by Bibliotheca. Customer is responsible for ensuring that all staff, volunteers and others who perform services at the Customer's behest are fully trained in the operation of the system components with which they are working.
10. Customer will immediately report all system problems to Bibliotheca. At Bibliotheca's request, Customer will generate system reports as may be needed by Bibliotheca and, if requested, maintain a log detailing all problems experienced with the system. Customer agrees to permit Bibliotheca reasonable remote access to support the System as demonstrated in Exhibit 1.
11. Customer will not modify Bibliotheca hardware or software without first consulting Bibliotheca. Customer represents that Bibliotheca software is the intellectual property of Bibliotheca and is protected by law, including copyright laws and international treaties. Copies of software may not be made without the expressed written consent of a Bibliotheca representative authorized to legally obligate the company. Furthermore, Customer will maintain the confidentiality of all information, be it in written, unwritten, or any other form, provided it by Bibliotheca. Only such information as may be necessary for Customer's agents to perform their duties shall be shared with such agents. Customer shall take all reasonable steps to protect Bibliotheca's intellectual property rights.

MISCELLANEOUS

1. Force Majeure. The parties to this Agreement will not be liable for any delay or failure to perform their obligations if that failure or delay is due to any cause or condition beyond the control of that party and, in particular, without limitation, any failure, damage or loss due to fire, flood, exposure or any act of God, industrial disturbance, failure of electrical telecommunications networks, acts of vandalism, sabotage, civil services, war, changes in legislation or regulations of any government or governmental agency, refusal or revocation of any license or consent by the government of any authority.
2. Limitation of Liability. The liability of Bibliotheca, its agents, employees, subcontractors and supplies with respect to any claims arising out of the performance or non-performance of obligations under the Agreement, or the design, manufacture, sales, delivery, installation or use of the Work or materials or the condition of other services hereunder irrespective of the theory upon which any claim may be based, including, without limitation, breach of the Agreement, breach of warranty or tort (including negligence), indemnity, strict liability or otherwise (i) shall in no event include consequential, indirect, special or similar damages including, but not limited to, loss of profits or revenue, or loss of business, and Customer hereby irrevocably waives any right it may have to any damages in excess of actual and incidental and (ii) except with respect to indemnity claims for personal injury (including death) or damage to property of third parties, shall in no event exceed in the aggregate 100% of the Purchase Price or the scope and limits of insurance required to be maintained under the terms of the Agreement, whichever is less. The limitation of liability shall prevail over any conflicting or inconsistent provisions contained in the Agreement

except where such conflicting or inconsistent provisions provide a more restrictive remedy.

3. Indemnification by Customer. Customer agrees to indemnify, defend (at its own expense with counsel satisfactory to Bibliotheca) and hold Bibliotheca harmless from any and all claims demand, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) for loss or damage which suffered by Bibliotheca as a result of injury to persons (including death) and property arising from:
 - (i) removal or modification to Bibliotheca-furnished safety features,
 - (ii) the disregard of Bibliotheca-furnished user safety instructions,
 - (iii) any portion of the Work which includes Customer's existing Work or Work furnished by Customer,
 - (iv) improper use of the Work,
 - (v) any information, representation, reports or data furnished or prepared by Customer or
 - (vi) Customer's failure to properly instruct employees regarding the proper use and maintenance of the Work.
4. Change orders. Customer is fully responsible for any and all costs that are incurred as a result of changes initiated by Customer to this Agreement, to any other contract signed between Bibliotheca and the Customer related to the Work, to any Purchase Order issued to Bibliotheca by the Customer related to the Work, and to any instructions provided to Bibliotheca by the Customer related to the Work.
5. Assignment. **No contract can be assigned without the consent of the governing body or its authorized representative (NRS 332.095).** The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement will not sell, transfer, assign, license, franchise or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement whether express or implied as if the proposed assignee was an original contracting party to this Agreement.
6. Severability. Should any court of competent jurisdiction declare any provision of this Agreement invalid, then such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.
7. Choice of Law: Venue. The laws of the State of Nevada shall control the validity, construction and effect of this Agreement and also any extensions and/or modifications of it. Any action, suit, or other proceeding concerning this Agreement must be brought and maintained only in a court of competent jurisdiction sitting in Washoe County, Nevada.
8. Costs and Expenses. Each party will pay its own costs and expenses in relation to the negotiations leading up to and in relation to the preparation, execution and carrying into effect of this Agreement and all other documents referred to in it. In the event that either party deems it necessary to take legal action to enforce any provisions of this Agreement, the prevailing party shall pay all expenses of such action including attorney fees and court costs at all stages of litigation.

9. Entire Agreement. The complete understanding between the parties is set out in this Agreement and this Agreement supersedes and voids all prior and contemporaneous understandings, proposals, letters, agreements or conditions expressed or implied, oral or written, except as herein contained. Any amendment, modification, waiver or discharge of any requirement of the Agreement will not be effective unless in writing signed by the parties hereto or by their authorized representatives.
10. Headings. The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
11. Third Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the parties to this Agreement.
12. Inter-Local Purchase. To the full extent permitted by local, state and federal law, the prices, terms and conditions of this agreement, in part or in whole, may be extended to other similar governmental and non-governmental bodies without restriction and without compensation. The aforementioned bodies may or may not be affiliated with the parties to this agreement through a purchasing cooperative, inter-local participation agreement, consortium or other cooperative agreement designed to extend contractual terms agreed to by any one member to all members of the cooperative group.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written. Signature below indicates agreement to all written terms in this document and its exhibits:

BIBLIOTHECA, LLC DBA BIBLIOTHECA

Signature: _____

Name: Al Coalla
Title: Chief Executive Officer

Date: _____

WASHOE COUNTY PUBLIC LIBRARY

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit 1: Quotation of Work & Products to Be Provided

Forming a part of the Sales Agreement is Bibliotheca's quotation for work to be performed and products to be provided to Customer.

Recommended Products	Quantity	Price	Sub Total
quickConnect™ Software (License per Kiosk)	28	Included	Included
RFID workstation shielded (USB)	28	\$539.80	\$15,114.40
NOTE: Upgrading your current self-checkouts with both quickConnect™ software and RFID workstation shielded is all that's needed to make Washoe County Library's current self-service environment RFID capable. Current Selfcheck computers must meet provided specifications to run quickConnect™ software			
RFID workstation mobile Tagging Cart Lease (3 Month Minimum Lease)	8	\$375.00	\$3,000.00
RFID Gate 400 1 aisle	6	\$5,983.00	\$35,898.00
RFID Gate 400 2 aisle	5	\$7,295.00	\$36,475.00
RFID workstation shielded (USB)	47	\$539.80	\$25,370.60
RFID tag™ full DiscCD (1000/Roll)	77	\$520.00	\$40,040.00
RFID tag squareTag (6,000 tags/Box)	71	\$750.00	\$53,250.00
Digital Library Assistant	1	\$3,795.00	\$3,795.00
Shipping, Handling, and Administration	1	\$4,455.00	\$4,455.00
All-Inclusive RFID Software (Site License)	1	\$4,995.00	\$4,995.00
Total (Less sales tax):			\$222,393.00

Annual Support and Maintenance (After the First Year)

Year 2: \$19,244.87

Year 3: \$19,244.87

Year 4: \$19,244.87

Year

5:

\$19,244.87

Exhibit 2: One Year Limited Warranty

Bibliotheca warrants that the equipment provided in conjunction with any Bibliotheca developed and supplied system(s) to be free from factory defects for a period of one year from the date of installation.

This limited warranty does not extend to any Bibliotheca product which, in the sole judgment of Bibliotheca has been subjected to abuse, misuse, neglect, improper installation, or accident, or any damage due to use or misuse produced from integration of the products into any mechanical, electrical, or computer system. Further, any abuse, misuse, neglect, improper installation, accident, enhancement, modification, alteration or change made without Bibliotheca's written consent will invalidate Bibliotheca's Limited Product Warranty.

In the event that it is determined the equipment failure is covered under this warranty, Bibliotheca shall, at its sole option, repair or replace the piece of equipment with functionally equivalent or better equipment and return such repaired or replaced equipment without charge for service or return freight.

This limited warranty, except as to title is in lieu of all other warranties or guarantees, either express or implied, and specifically excludes, without limitation, warranties of merchantability and fitness for a particular purpose under the uniform commercial code, or arising out of custom or conduct. The rights and remedies provided herein are exclusive and in lieu of any other rights or remedies.

In no event shall Bibliotheca be liable for any indirect or consequential damages, incidental damages, damages to person or property, or other damages or expenses due directly or indirectly to the purchased equipment, except as stated in this warranty. In no event shall any liability of Bibliotheca exceed the actual amount paid to Bibliotheca for a specific piece of equipment involved in the incident.

Unless specifically contracted otherwise, warranty service is provided under the terms and conditions of Bibliotheca's standard yearly support and maintenance agreement with the exception of any reference to software updates.

Exhibit 3: Terms and Conditions of Support and Maintenance

These Terms and Conditions of Support and Maintenance are evergreen in nature and do not expire. Billing cycle for Support and Maintenance will be on an annual basis beginning with the Go Live Date.

- I. Coverage. Bibliotheca will provide Customer support and maintenance services on an annual basis subject to Bibliotheca's Equipment Lifecycle Policy and payment of the annual Product Support and Maintenance Fee. The following services will be provided during the period covered as described below:
 - i. With the exception of consumable supplies (e.g. print ribbons) and parts with specified limited usage life spans (e.g. printer heads), Bibliotheca will repair or replace hardware components unless such failure is caused by Customer, as determined by Bibliotheca in consultation with the Customer.
 - ii. Replacement parts, whether new or refurbished, will be equal to or better than the parts being replaced. Replacement parts will be provided on an exchange basis. End of Support (EOS) for Hardware products is specified in the attached document entitled Bibliotheca Maintenance and Equipment Lifecycle Policy.
 - iii. In the event that the Customer reports material bugs or defects in the Software, Bibliotheca shall use commercially reasonable efforts to correct or replace the Software or provide the services necessary to remedy any programming error attributable to Bibliotheca that significantly affects the functionality of the Software.
 - iv. Bibliotheca shall provide points of contact for Customer to report Product problems, failures, and defects and to request Product changes and enhancements. Only those individuals specifically designated by the Customer shall contact Bibliotheca in regard to such matters and Bibliotheca is not obligated to respond to any other employees except those specifically designated.
 - v. Bibliotheca shall provide the maintenance and support services during the service period by telephone, facsimile, email, on site visit or any other means which its deems appropriate, at its sole discretion, to adequately provide those services.
 - vi. Bibliotheca shall be responsible for outbound shipping costs of products and components covered under this agreement. The Customer is responsible for shipping costs of products and components that are returned to Bibliotheca for replacement or repair.
 - vii. As a part of this agreement, Bibliotheca shall supply Customer any and all updates, improvements, and modifications to the Licensed Programs that Bibliotheca makes available to its licensees generally without charge, provided that Bibliotheca reserves the right to charge separately for new options or new applications that, in the discretion of Bibliotheca, constitute a new software product.

- viii. Such updates, improvements, and modifications shall be provided to the Customer within the framework of periodic official releases. Software support will be limited to the two most recently distributed releases.
- ix. Maintenance services to be provided by Bibliotheca under this Agreement do not include:
 - i. Correction of errors arising from changes, alterations, additions, or modification by persons other than the employees or agents of Bibliotheca or caused by the operation of the Product other than in accordance with the operating specifications.
 - ii. Correction of errors arising from the fault, neglect, misuse, or omission of the Customer or its servants, agents, contractors, invitees, or any other person whether or not that person is under the control or direction of the Customer.
 - iii. Rectification of errors or defects caused by the incorrect or unauthorized use, modification, revision, variation or translation of the software by the Customer or its servants, agents, contractors, or invitees.
 - iv. Repair of damage arising from the failure or surge of electrical power, fusion, fire, air conditioning malfunction, damage caused in transportation, or any other environmental factor or cause other than a cause arising from normal use of the Product.
 - v. Correction of errors caused by the use of computer programs not licensed by Bibliotheca for use by the Customer.
 - vi. Customer shall be responsible for ILS/LMS-related changes and will bear the responsibility and costs incurred when these changes result in changes to Bibliotheca system configurations.
 - vii. Windows OS upgrades/updates.
- II. Assignment of Warranties on Hardware Products. In addition to Bibliotheca's obligations under the Maintenance Agreement, Bibliotheca hereby assigns to the Customer all rights of Bibliotheca under any manufacturer's warranties applicable to Hardware Products purchased under this Agreement to the extent such assignment is permitted under such warranties. Such assignment will be effective upon payment of the Total Purchase Price and all other charges invoiced for the shipment of the Products. Except as provided hereunder or pursuant to an executed Maintenance Agreement, Bibliotheca shall have no obligation to provide maintenance support or other services for Hardware Products purchased under this Agreement.
- III. Limitation on Services. Notwithstanding the above, in the event that Customer or any third party enhances, modifies, alters, or otherwise makes any change to the Products without the prior express written consent of Bibliotheca, Bibliotheca shall have no obligation whatsoever to provide maintenance or support of such Products at any time after such enhancement, modification, alteration, or change. Notwithstanding anything herein to the contrary, Bibliotheca's obligation to provide maintenance and support for

the Licensed Programs shall extend only to the most recent version and the next most recent version of the Licensed Programs provided to Customer.

- IV. Upgrades. The information technology industry is dynamic and marked by frequent product replacement and upgrades. With respect to hardware and third party software, Customer retains the responsibility for the costs of purchase and installation of said upgrades necessary to maintain the functionality of system.
- V. Customer Obligations. During the term of this Agreement:
- i. Customer shall provide Bibliotheca with sufficient documentation, information, assistance, support, and test time on Customer's computer system to duplicate any reported problems, certify that the problem is with the Products, and certify that the problem has been corrected. Bibliotheca will be provided with remote access to systems to aid the troubleshooting and repair process.
 - ii. Customer shall designate specific employees who will be trained in all aspects of the products, including trouble shooting. These, and only these employees, may contact Bibliotheca for matters related to this Agreement.
 - iii. Customer shall perform problem definition activities and any remedial or corrective actions as described in the Licensed Programs customer manuals and other system documentation provided to Customer by Bibliotheca prior to seeking assistance from Bibliotheca.
 - iv. Customer is responsible for performing scheduled preventative maintenance as per product specifications.
 - v. Customer shall provide Bibliotheca's maintenance personnel with proper, safe access to the equipment and software at all requisite times for the purpose of providing the maintenance services.
 - vi. Customer will provide Bibliotheca with at least thirty (30) days written notice of the Customer's intention to move the equipment to a location other than the premises.

Exhibit 4: Product Maintenance and Lifespan Policy

The supplied self-service solution will be maintainable throughout the life of the equipment while it has a valid support contract. By investing in a support and maintenance agreement, all parts are replaced and/or repaired free of charge should they become defective during the life of the equipment. This excludes any consumables.

For All Products but Security Gates: Bibliotheca recommends that for planning purposes the expected lifespan of all hardware products (excluding security pedestals) is six years. After this period, support will continue to be made available on a contractual year-by-year basis if this is considered economically viable (based on availability/cost of major components at that time). Bibliotheca's intention is to meet the customer's ongoing requirements and all efforts will be made to affect repairs on said equipment, but results may be limited by availability of parts or inventory. In all cases and to ensure that the customer uses the latest available technology, Bibliotheca allows customers to upgrade their equipment to the current levels at a 30% discount.

Security Gates: Bibliotheca recommends that the expected lifespan for security pedestals is eight years. After this period, support will continue to be made available on a contractual year-by-year basis if this is considered economically viable (based on availability/cost of major components at that time). Bibliotheca's intention is to meet the customer's ongoing requirements and all efforts will be made to affect repairs on said equipment, but results may be limited by availability of parts or inventory. In all cases and to ensure that the customer uses the latest available technology, Bibliotheca allows customers to upgrade their equipment to the current levels at a 30% discount.

RFID Tags: Bibliotheca guarantees its tags for the life of the items to which they are affixed. Should Customer find a tag that is inoperable, Bibliotheca will replace it, free of charge.

Automated Materials Handling: Bibliotheca recommends that the expected lifespan of its sorting systems be eight years. After this period, support will continue to be made available on a contractual year-by-year basis if this is considered economically viable (based on availability/cost of major components at that time). Bibliotheca's trade-in program allows customers to trade smaller sorters toward the purchase of larger ones at any time, with a yearly straight line depreciation of just 15%, with a sorter up to five years old.

Exhibit 5: Software License Agreement

Bibliotheca, LLC hereby agrees to grant Washoe County Public Library, who agrees to accept the following licensed rights and limitations ("License") for Customer's use of Vendor-provided software.

1. **Software:** Software, under the terms and conditions of this License (referenced hereinafter as "Software"), means any of the following components provided to Customer by Vendor:
 - i. Any computer programs provided by Vendor, either consisting of a set of instructions, calculations and/or statements loaded in a computer (or a device which incorporates a computer) or recorded on a computer readable medium for loading in a computer;
 - ii. Supportive instructional/reference materials such as: training materials, manuals, on-screen tutorials, and other computer program relevant materials whether on paper or computer readable media ("Documentation"); and
 - iii. Any new release, update, upgrade, enhancement, addition, supplement, modification of a program or additional Vendor Software and/or its Documentation provided by Vendor, subsequent to the initial delivery, that is not licensed by specific reference under a mutually agreed upon separate license agreement.
2. **Grant of License:** Vendor hereby grants Customer and Customer hereby accepts a non-transferable, non-exclusive license, under applicable copyrights and/or trade secrets, to use Vendor-provided Software only on the specific computer(s) for which it was registered and delivered to Customer. All Software (other than Documentation) will be provided by Vendor to Customer in machine-readable object code only. Customer acknowledges that it does not acquire any rights of title or ownership in the Software (including Documentation) and agrees that all proprietary rights to the Software shall at all times remain with Vendor or its relevant third-party provider. Customer may, for its internal use only, print or otherwise reproduce Vendor-developed Documentation if all included Vendor markings, e.g. trademarks, copyrights and statements of confidentiality, are included on each copy. Customer acknowledges and agrees that any third party documentation supplied by Vendor, which is marked as copyrighted and/or confidential, shall not be copied or reproduced in any manner.
3. **Term of License:** This License shall remain in force from the date of delivery and continue until Customer ceases all use of the Software or Customer's licensed rights are terminated for cause. Customer acknowledges and agrees that if this Agreement terminates for any reason, all of Customer's licensed rights to the Software (including Documentation) are relinquished and, within five business days thereafter, Customer (at Vendor's option) will either deliver to Vendor or destroy the original and all copies of the Software including its Documentation. Upon Vendor's request, Customer agrees to certify to Vendor in writing its full compliance with this provision.
4. **Assignment:** This License and any rights granted herein shall not be transferred, sub-licensed or assigned to any third party without the prior written consent of Vendor.

5. Termination: If Customer neglects or fails to pay the specified license fees, or fails to adhere to any of its obligations hereunder, this license may be immediately terminated by Vendor for cause.
6. Security and Limitations of License: Customer acknowledges and agrees that:
 - i. All Software and upgrades of Software (including its Documentation), which are provided to Customer by Vendor, contain proprietary copyrighted, trade secret and/or confidential information of Vendor or its relevant third-party provider;
 - ii. Customer shall not decrypt, reverse engineer, reverse compile, modify, or create derivative works of the Software;
 - iii. Customer and its employees shall take all reasonable precautions to safeguard and hold all Software, including upgrades, additions and enhancements, in confidence, at least to the same extent that it protects its own most valuable confidential information;
 - iv. If Customer violates this License or does not pay the agreed upon licensing fees, Vendor will have all of the rights provided herein and available under law, including the right to injunctive relief;
 - v. If any other communication, agreement or purchase order conflicts with, or may affect interpretation of, the understandings set forth herein, this License shall control as the singular expression of licensed rights.

Exhibit 6: Notices

If to Bibliotheca:

Al Coalla, Director
Bibliotheca
3169 Holcomb Bridge Rd., Ste. 200
Norcross, GA 30071

877-207-3127 ext. 121
a.coalla@bibliotheca.com

If to Customer:

Michael L. Sullens, Purchasing and Contracts Manager
Washoe County Purchasing Office
1001 East Ninth Street
Building D, Room D-200
Reno, NV 89512-2845

[Phone]
[Email]

bibliotheca + 3M
the best of both worlds

Bibliotheca, LLC
403 Hayward Ave. N.
Oakdale, MN 55128
United States

3169 Holcomb Bridge Rd., Ste. 200
Norcross, GA 30071
United States

www.bibliotheca.com
info-us@bibliotheca.com

